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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Or-Bach et al.

Title: System and Method for Consolidated Shipping and Receiving Using Reusable Containers

Serial No.: 09/524,060

Filed: 3/13/00

Examiner: Andrew J. Rudy

Art Unit: 3627

Docket No.: Or-Bach2

Assistant Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Applicants enclose herewith a copy of an Appeal Brief in the above-mentioned patent application.

Applicants enclose a check for \$250 to cover the fee for filing this brief. The Commissioner is requested to deduct any other required fee, or credit any overpayment, to deposit account 500794.

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Respectfully submitted,

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APPEAL BRIEF

- I. Real Parties in Interest. The real parties in interest are Applicants Zvi Or-Bach and Dan Kikinis.
- II. Related Appeals and Interferences. There are no related appeals or interferences.
- III. Status of Claims. Claims 1-49 are pending and rejected.
- IV. Status of Amendments. All amendments have been entered.¹
- V. Summary of Claimed Subject Matter.

Pursuant to rule 37 CFR 41.37(c)(a)(v), there are no means plus function or step plus function elements in the present application. The independent claims are summarized as follows.

¹ A Response to Final Action was filed on July 28, 2005. Although it was filed well over two months ago, as of the date of this Appeal Brief, the Examiner has not acted on this Response. The Response did not amend any of the claims.

A. Summary of Claim 1 and 29

Consumer goods are provided to consumers in reusable containers (e.g. container 201 in Fig. 2).² The containers are then returned so that they can be used to provide consumer goods to other customers.³ This is particularly advantageous if the packaging is expensive.

Applicants affix a radio frequency identification tag (“RFID”) (e.g. RFID 216 in Fig. 2) to containers 201.⁴ When the customer returns containers 201, a scanner (e.g. scanner 250 in Fig. 2) emits a radio signal to query the RFIDs affixed to the containers 201. The RFID emits a response radio signal, which is received by scanner 250. Scanner 250 then updates a database to keep track of the location of the container.⁵

As mentioned in the Application, a shipping box can cost between 0.5 and 2 dollars.⁶ By using reusable containers, the packaging expense can be reduced. However, reusable containers can be quite expensive. The RFIDs and scanners are simple and reliable tools for ensuring that the containers are returned. RFIDs are also expensive, and can also cost between 0.5 and 2 dollars. Thus, they are rarely used in consumer applications.⁷ However, they are practical in the context of Applicants’ invention because their return (along with the return of the reusable container) is tracked.

B. Summary of Claims 8, 11, 31 and 34

² See also 3:3-5 (this style of citation means application page 3, lines 3-5) and 15:1-16:4.

³ See, for example, 3:4-5.

⁴ See also page 3:6-10 and 15:9.

⁵ See, for example, 17:19- 18:4. See also 3:14-18.

⁶ 14:12-14.

⁷ 14:9-11.

Claims 8, 11, 31 and 34 pertain to a system for performing the method of claim 1.

A system in accordance with claim 8 comprises a memory device 150b,⁸ a plurality of reusable containers 201, each container 201 having a RFID 216 affixed thereto, and a scanner 250⁹ scanning the RFID 216 when a customer returns reusable container 201. As mentioned above, this system tracks the return of reusable containers by customers.¹⁰ Because of this, it is now feasible to use more expensive reusable containers, since one can ensure that the customer returns them.

C. Summary of Claim 10 and 32

During a method in accordance with claim 10, goods are placed in reusable containers 201.¹¹ The reusable containers have RFIDs 216 attached thereto.¹²

A relationship is established between RFIDs 216 and a memory 150b. See, for example, Fig. 2 and the description of the database stored in memory 150b described at 16:20-22 and 3:11-14.

Thereafter the goods are shipped in containers 201 to a distribution point where they are provided to customers.¹³ The reusable containers are then collected from the customers. The containers collected from the customers are identified by electronically querying the RFIDs 216 attached to reusable containers 201.¹⁴

⁸ Memory 150b is described at 16:20-17:8 and illustrated in Figs. 2 and 1. See also 3:11-14.

⁹ Elements 201, 216 and 250 are illustrated in Fig. 2. The reusable containers are discussed at 3:3-4 and 15:1 et seq. The RFIDs are discussed at page 3:6-10 and 15:9-16. The scanner is discussed at 16:20-22.

¹⁰ 3:14-18 and 17:19-18:2.

¹¹ 3:3-4.

¹² Again, elements 201 and 216 are illustrated in Fig. 2 and described in the associated text.

¹³ See, for example, 4:15-5:17.

¹⁴ 3:14-18 and 17:19-22.

D. Summary of Claim 13

Claim 13 is similar to claims 10 and 32, except that in claim 13, instead of using RFIDs, reusable containers 201 have electronically readable indicia attached thereto.¹⁵

E. Summary of Claim 18

Claim 18 is similar to Claim 13, except that it further requires collecting information on the purchasing habits of customers¹⁶ and storing that information in a memory device.¹⁷ A reduction in shipping cost is offered in exchange for allowing targeted advertisements to be added to the reusable containers in response to the information in the memory device.¹⁸

VI. Issues to be Reviewed on Appeal.

A. Are the claims obvious over Mitchell?¹⁹

B. After over 5½ years of prosecution and six completely irrelevant office actions (including one rejecting the claims over Mitchell, and one withdrawing the rejection over Mitchell), should the Examiner be permitted to again reject the same claims over Mitchell, or does this office action constitute abuse of process?

¹⁵ 18:12-14.

¹⁶ See 18:18- 19:2.

¹⁷ See 18:19- 19:2.

¹⁸ See 19:3-5.

¹⁹ Paragraph 3 of the most recent office action states that “Wertenberger, US 6,698,619 discloses the Applicant’s inventive concept.” It is unclear whether the Examiner intends to raise this as a new ground of rejection. In any event, Wertenberger was filed two years after Applicants’ filing date, and is not prior art.

VII. Argument.

A. Claims 1-7, 10, 19, 21, 25, 27, 29, 30, 32, 33, 35, 36, 42, 44, 45, 47 and 48 Distinguish Over the Cited Art.

1. Mitchell Does Not Teach or Render Obvious Claim 1.

Claim 1 recites:

a method comprising:

providing goods in reusable containers, said reusable containers having a radio frequency identification device attached thereto;

establishing a relationship between a radio frequency identification device and a memory;

providing said goods in said containers to customers;

collecting said reusable containers from said customers; and

identifying which customers have returned their reusable containers by electronically querying the radio frequency identification devices attached to the reusable containers collected from said customers.

The sole reference cited against the claims is Mitchell.²⁰ Mitchell has nothing to do with Applicants' claimed invention.

Mitchell applies RFIDs to containers used within factories. For example, he states:

In many systems and processes, such as in industrial and manufacturing processes, reusable containers are used to transport raw materials or finished goods or objects from an origin station to others, and in order for the personnel running the process to be able to track and effectively utilize such reusable containers some sort of a labeling system is provided.

Mitchell col. 1, lines 7-13. At lines 38-40, Mitchell teaches using the invention "with any suitable process for manufacturing or otherwise treating objects, goods, materials,

²⁰ As mentioned above, the other reference mentioned by the Examiner is not prior art.

products or the like.” At col. 3, lines 11-2 he reiterates that his containers are “used to transport material or objects in manufacturing or related processes.”

In order for a reference to render obvious an invention, **all** claim limitations must be taught or suggested by the reference. MPEP §2143.03.²¹ Nowhere does Mitchell teach or suggest applying RFIDs to packages that are sent to customers, nor does Mitchell teach or suggest having the customers return those packages, nor does Mitchell teach or suggest electronically querying the RFIDs to track to return of containers from the customers. Thus, claim 1 patentably distinguishes over Mitchell.

2. The Examiner’s Reliance on the Admitted Prior Art is Illegal.

The Examiner states:

Mitchell does not explicitly use the terminology of identifying customers returning reusable containers.

Office Action dated 10/19/04, §4. In fact, Mitchell does not employ or disclose the concept of providing containers to customers, having the customers return those containers, or identifying customers who return the containers, nor does the Examiner contend otherwise.

The Examiner tries to dodge this deficiency in Mitchell by arguing:

However, tracking of which customers return goods has been common knowledge in the art, as is tracking a customers (sic) purchase habits, alerting customers when products have arrived for pick-up, making such products available and providing reduced shipping costs.

Office Action dated 10/19/04, §4. The Examiner was unable to provide evidence of this alleged “common knowledge”. In re Zurko, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)

²¹ See also In re Royka, 180 USPQ 580 (CCPA 1970) and In re Wilson, 165 USPQ 494 (CCPA 1970).

forbids reliance on the alleged “common knowledge” without such evidence. Therefore, the Appeals Board cannot consider it.

An earlier pre-Zurko case banned reliance on common knowledge of facts unless they “are capable of such instant and unquestionable demonstration as to defy dispute.” In re Alhert, 165 USPQ 418, 420 (CCPA 1970).²² Alhert also forbids the Examiner’s attempt to use “common knowledge” because in this case it is not capable of instant and unquestionable demonstration. In fact, in a telephone interview on May 24, 2005, the Examiner admitted that he did not know whether evidence of such common knowledge existed.²³ Applicants are also unaware of any such common knowledge that can be legally combined with Mitchell. Since the Examiner cannot demonstrate that such common knowledge exists, Alhert also forbids the Appeals Board taking into consideration this allegation by the Examiner.

Applicants traversed the Examiner’s illegal use of alleged common knowledge. See the Office Action Response dated 9/14/03 and Response to Final Action dated 7/28/05. MPEP §2144.03(C) required the Examiner to provide evidence of the existence of the common knowledge. The Examiners inability to do this is a further reason that reliance on the alleged common knowledge is illegal.

In conclusion, since there is no evidence that a limitation in claim 1 exists in the prior art (“identifying which customers have returned their reusable containers by electronically querying....”), Zurko mandates reversal of the outstanding rejection of claim 1.

²² Applicants respectfully submit that Zurko forbids considering official notice of the alleged common knowledge without evidence, even if such common knowledge passes the Ahlert test.

²³ See the Response to Final Action dated July 28, 2005, page 5.

3. Even if the Alleged Common Knowledge Existed, It Still Would Not Render Obvious Applicants' Invention Because It Does Not Teach or Suggest Limitations Missing From Mitchell

The Examiner's allegation that "tracking of which customers return goods has been common knowledge in the art" is irrelevant and misleading because **Applicants do not claim tracking which customers return goods. Applicants claim tracking which customers return containers.** Therefore, even if the Examiner's alleged common knowledge existed and could be relied upon (which it can't), this alleged "common knowledge" does not render obvious any of Applicants' claims because it does not disclose limitations missing from Mitchell.

The concept of providing goods in reusable containers to customers is also missing from both Mitchell and the alleged common knowledge.

As mentioned above, in order for a claim to be obvious, all of the claim limitations must be found somewhere in the prior art. MPEP §2143.03 and Royka, supra. Thus, even if the Examiner could rely on the illegal "common knowledge", since limitations are missing from both Mitchell and that common knowledge, claim 1 must be allowed.

4. Even if the Alleged Common Knowledge Existed, there is No Basis for Combining Such Common Knowledge with Mitchell.

In order for modification of a reference to be obvious, there must be a suggestion or motivation in the cited art for making that modification. MPEP §2143.01, citing In re Rouffet, 47 USPQ2d 1453 (Fed. Cir. 1998). Even if there is some company that tracks which customers return goods, there is no basis for combining such a practice with Mitchell. Mitchell does not provide goods in reusable containers to customers. Mitchell

also does not place RFIDs on packages that are provided to customers. Mitchell has nothing to do with providing anything to customers. Therefore, there is no reason that the practice of such a company would motivate Mitchell to modify anything.

The Office Action alleges “The motivation would have been have (sic) provided common knowledge customer service in order to keep/grow a business entities (sic) income.” Office Action dated 10/19/04, §4. First, this statement makes no sense whatsoever. Second, assuming that the Examiner meant to say that there would have been a motive to combine Mitchell because it would grow Mitchell’s income, since Mitchell has nothing to do with sending things to customers, the common knowledge would not tell Mitchell anything that would help him grow his income.

Leaving all that aside, even if Mitchell did eventually provide goods to customers and tracked the return of goods by the customers that still would not render obvious claim 1. Since Mitchell does not provide his goods in reusable containers to customers and Mitchell does not provide said goods in containers bearing RFIDs to customers, even if Mitchell tracked the return of goods from customers, Mitchell still would not perform Applicants’ claimed act of tracking the return of reusable containers from customers. Further, Mitchell would not perform Applicants’ claimed act of tracking the return of reusable containers from customers using RFIDs. Therefore, the combination of Mitchell and the illegal alleged common knowledge would not render obvious Applicants’ claim 1.

Claims 2-7, 10, 19, 21, 25, 27, 29, 30, 32, 33, 35, 36, 42, 44, 45, 47 and 48 are patentable for at least the reasons set forth above with respect to claim 1.

B. Claim 5 is Patentable

Claim 5 states:

Method of claim 1 further comprising:

receiving orders from customers, said orders being for goods from a plurality of vendors;

collecting said goods from said plurality of vendors at a central location;

providing said goods in said reusable containers;

informing said customers when said goods will be available for pickup; and

making said goods available for pickup by said customers, wherein said goods are in said reusable containers.

1. Mitchell Lacks Several Key Limitations of Claim 5.

Again, in order for a reference to render obvious an invention, **all** claim limitations must be taught or suggested by the reference. MPEP §2143.03 and Royka, supra. Mitchell does not teach or suggest **any** of Applicants' claimed acts of

- a) receiving orders from customers, said orders being for goods from a plurality of vendors;
- b) collecting said goods from said plurality of vendors at a central location.;
- c) informing said customers when said goods will be available for pickup; or
- d) making said goods available for pickup by said customers, wherein said goods are in said reusable containers.

2. The Allegation of Common Knowledge is Illegal.

Again, the Examiner does not allege that Mitchell teaches or suggests any of these limitations. Rather, the examiner simply alleges that there is "common knowledge" that

he cannot support with any evidence. Reliance on this common knowledge is illegal and this rejection must be overturned. See section VII(A)(2) above.

3. Even if the Alleged Common Knowledge Existed and Could be Considered, it Still Does not Supply Limitations Missing From Mitchell.

Even if such “common knowledge” did exist, there is no allegation that “collecting said goods from said plurality of vendors at a central location” and “making said goods available for pickup by said customers, wherein said goods are in said reusable containers” are in Mitchell or the “common knowledge”. Since MPEP §2143.03 and Royka mandate that a claim can only be rejected if **all** the limitations are found in the prior art, and the above-mentioned limitations cannot be found in anything cited by the Examiner (including the Mitchell and the alleged common knowledge), claim 5 must be allowed.

C. Claim 6 is Patentable

Claim 6 recites:

Method of claim 5 wherein said customers return said reusable containers to a central collection point, said method further comprising querying the radio frequency identification devices within said containers when said customers return said containers to said collection point.

There is no mention in the Office Action as to where the central collection point of claim 6 is found in the prior art. Since the Office Action does not even attempt to point out where the subject matter of claim 6 is found in the prior art (including Mitchell and the alleged common knowledge), claim 6 must be allowed. Again, see MPEP §2143.03 and Royka, supra..

D. Claim 7 is Patentable

Claim 7 states:

Method of claim 1 further comprising crediting accounts of those customers who return their reusable containers, said crediting being accomplished by a computer that receives the data scanned in from said radio frequency identification device.

The subject matter of claim 7 is not in Mitchell, nor does the Office Action allege otherwise. (In fact, Mitchell also does not teach or suggest a computer keeping track of anything relating to reusable containers.) The Office Action also does not allege that this subject matter is part of the “common knowledge”. Therefore, there is no prior art showing the limitations of claim 7 (nor does the Examiner allege otherwise).

As mentioned above, in order for claim 7 to be obvious, all of the limitations of claim 7 must be disclosed somewhere in the cited art. MPEP §2143.03 and Royka, supra. Since the limitations of claim 7 are not disclosed in the cited art, it must be allowed.

E. Claims 8, 9, 11, 12, 20, 22, 26, 28, 31, 34, 37-41, 43, 46 and 49 are Patentable

Claim 8 recites:

A system comprising:

a memory;

a plurality of reusable containers, each reusable container having a radio frequency identification device affixed thereto; and

a scanner for scanning the radio frequency identification device affixed to the containers and tracking when said containers are provided to customers and when said containers are returned to said customers.

The Examiner effectively concedes that there is no mention by Mitchell of a) customers; b) customers returning reusable containers; c) customers returning reusable containers equipped with radio frequency identification devices; or d) scanning reusable containers equipped with radio frequency identification devices that have been returned by customers. As mentioned above, the Examiner improperly tries to rely on “common knowledge” to plug the various defects in Mitchell. This is illegal for the reasons set forth in section VII(A)(2) above.

Further, even if the illegal common knowledge could be considered, the combination of the illegal common knowledge and Mitchell still does not disclose providing goods to customers in reusable containers, or tracking the return of reusable containers. In order for a claim to be held obvious, all of the limitations of that claim must be found in the prior art. MPEP §2143.03 and Royka, supra. Since several limitations of claim 8 cannot be found in the prior art it must be allowed.

Finally, even if the illegal common knowledge could be considered, since Mitchell has nothing to do with providing goods to customers, there is no suggestion for combining the illegal common knowledge with Mitchell. Since there is no such suggestion, claim 8 must be allowed. See MPEP §2143.01 and Rouffet, supra.

Claims 9, 11, 12, 20, 22, 26, 28, 31, 34, 37-41, 43, 46 and 49 distinguish over the cited art for at least the same reason as claim 8.

F. Claim 9 Distinguishes over the Cited Art

Claim 9 recites:

System of claim 8 wherein a computerized billing system is electronically coupled to the memory is that a customer is billed if that customer does not return the reusable container.

The subject matter of claim 9 is not in Mitchell (nor does the Office Action allege otherwise). The Office Action also does not allege that this subject matter is part the “common knowledge”. Therefore, there is no prior art teaching or suggesting the subject matter of claim 9. Thus, Claim 9 must be allowed. Again, see MPEP §2143.03 and Royka.

G. Claims 13-17 Distinguish over the Cited Art

Claim 13 is similar to claim 10, except that instead of referring to a radio frequency identification tag, claim 13 recites that “said reusable containers have an indicia attached thereto.” Claim 13 distinguishes over the cited art for reasons similar to claim 10, discussed in section VII(A) above. Claims 14-17 are patentable for reasons similar to claim 13.

H. Claim 14 Distinguishes over the Cited Art

Claim 14 recites the act of “entering into (a) memory information indicating the containers and the customers to whom said containers are being provided.” As mentioned above, Mitchell has nothing to do with customers and does not teach this limitation (nor does the Office Action allege otherwise). The Office Action does not allege that this limitation is part of the illegal common knowledge or Mitchell.

As mentioned above, MPEP §2143.03 and Royka mandate that in order for a claim to be obvious, the prior art must teach all the limitations of that claim. Therefore,

even if the common knowledge could be properly considered, since neither Mitchell nor the common knowledge teach or suggest limitations of claim 14, claim 14 must be allowed. In any event, the so-called common knowledge cannot be considered for reasons set forth in section VII(A) above.

I. Claim 18 Distinguishes over the Cited Art

Claim 18 recites:

providing goods in reusable containers, said reusable containers having identification indicia attached thereto;

establishing a relationship between that indicia and a memory;

providing said goods in said containers to customers;

collecting information on the purchasing habits of said customers and storing said information in a memory device; and

offering a reduction of shipping cost in exchange for allowing targeted advertisement to be added to the reusable containers in response to said information in said memory device.

Mitchell neither teaches nor suggests providing goods in reusable containers to customers, collecting information on the purchasing habits of said customers, storing information in a memory device, or offering the reduction of shipping cost. (The Office Action does not allege otherwise.) Therefore, claim 18 must be allowed.

The Office Action alleges that it is common knowledge to track customer purchase habits (Office Action of 10/19/04, §4). As mentioned in section VII(A)(2) above, the Examiner's reliance on common knowledge is illegal. Therefore, the alleged common knowledge cannot be considered by the Appeals Board.

Further, even if there were such common knowledge, there is nothing in the art to suggest that such common knowledge should be combined with Mitchell. Mitchell has nothing to do with a) customers; or b) shipping goods to customers. Therefore, there is nothing in Mitchell or the alleged common knowledge that would motivate anyone to combine them. See section VII(A)(4) above.

Applicants previously demanded that the Examiner provide documentary evidence as to the existence of such common knowledge, and the Examiner was unable to do so. See the Office Action dated 6/13/03, page 2 and the Office Action Response dated 9/14/03, page 3. Under these circumstances, in addition to Zurko, MPEP §2144.03(C) and Alhert also makes it illegal to consider the alleged common knowledge.

J. Claims 19-24 Distinguish over the Cited Art

1. Mitchell Does Not Teach or Suggest Claim 19.

Claim 19 recites:

Method of claim 1 wherein said reusable containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

First, Mitchell has nothing to do with consumer products (nor does the Examiner allege otherwise). Instead, Mitchell pertains entirely to industrial processes. There is nothing in Mitchell to teach or suggest that Mitchell should depart from his manufacturing and provide consumer goods to consumers, nor does the Office Action allege otherwise.

Second, Mitchell does not teach or suggest shipping consumer products to consumers of those products in reusable containers. Third, Mitchell does not teach or

suggest that consumer products should be shipped to consumers in containers bearing an RFID. Instead, Mitchell merely uses his RFIDs within the confines of a factory. Therefore, claim 19 distinguishes over Mitchell.

2. The Illegal Common Knowledge Cannot Provide the Suggestion to Modify Mitchell.

The Examiner tries to dodge the defects in Mitchell by relying on alleged common knowledge. First, for reasons set forth in section VII(A)(2), reliance on common knowledge in the present application is illegal.

Second, even if the illegal common knowledge could be considered by the Appeals Board, the sole justification proffered by the Examiner for modifying Mitchell in light of the common knowledge makes no sense whatsoever: “The motivation would have been have provided common knowledge customer service in order to keep/grow a business entities income (sic).” Office Action dated 10/19/04, §4.

Third, there is no reason why the illegal common knowledge would motivate Mitchell to stop his manufacturing, and start providing consumer products to consumers of those products, or why this would have caused his income to grow. Mitchell has nothing to do with consumer goods. The Examiner has provided no evidence that the common knowledge includes a teaching that Mitchell could increase his income by going into consumer goods sales.

Fourth, even if one were to combine Mitchell with the illegal common knowledge, this would not result in claim 19, since there is nothing to teach or suggest that Mitchell a) provides consumer products to customers in reusable containers; or b) provide consumer products in reusable containers bearing RFIDs. As mentioned above.

Mitchell confines use of reusable containers and RFIDs to a factory. There is no reason he would start sending consumer products in those reusable containers to customers.

K. Claims 47 and 49 Distinguish over the Cited Art

Claim 47 recites:

Method of claim 29 further comprising:

electronically ordering from a plurality of different companies some of said goods, said ordering of said goods being accomplished by a customer;

shipping said goods to a distribution point for pick-up by said customer in response to said ordering.

The Office Action effectively admits that Mitchell neither teaches nor suggests the subject matter of Claim 47. The final Office Action states: “Regarding claims 47-49, these methods have been common knowledge within the shipping art.” Again, reliance on common knowledge in these circumstances is illegal for reasons set forth in section VII(A)(2). Further, since Mitchell has nothing to do with shipping to customers, even if there were such common knowledge, the Examiner has not cited any reason whatsoever why one skilled in the art would combine such knowledge with Mitchell. Therefore, again, claim 47 must be allowed. See MPEP §2141.03 and Rouffet, supra.²⁴ Claim 49 must be allowed for similar reasons.

L. Claim 48 Distinguishes Over Mitchell

Claim 48 recites:

²⁴ The Final Office Action states “The motivation for having provided such would have been implementing common knowledge customer/provider service in the shipping art.” This statement makes no sense. Since Mitchell does not provide goods to customers, there is no reason why one would modify Mitchell to perform these steps, even if they were part of the prior art.

Method of claim 47 wherein said goods from said plurality of different companies ordered by said customer are provided in one of said reusable containers, said customer picking up said goods at said distribution point.

Again, Mitchell has nothing to do with claim 48, and the Office Action doesn't even attempt to point out where the limitations of claim 48 could be found in the Mitchell. Reliance on the alleged common knowledge is illegal for reasons set forth in section VII(A)(2) above. MPEP §2143.03 and Royka, supra mandate that in order for a claim to be obvious, the prior art must teach all the limitations of that claim. Since the cited art fails to teach or suggest claim 48, claim 48 must be allowed. Finally, even if any of the limitations of claim 48 were part of the common knowledge, for reasons set forth in section K there is no reason to modify Mitchell in light of that common knowledge.

M. The Outstanding Office Action Violates Numerous Rules of Patent Office Procedure.

As of the date of this Appeal Brief, this Application has been pending for about 5½ years, and has gone through six Office Actions. This is a textbook case of the “piecemeal prosecution” specifically forbidden by MPEP §707.07(g).

Each of the previous Office Actions alleged that all claims were rendered obvious by a single reference. (There are 49 claims.) The outstanding Office Action purports to explain why 49 claims are invalid in light of a single reference (Mitchell) in two short paragraphs (about one half of a page). (See the Office Action dated 10/19/04).²⁵ This is

²⁵ The Final Action simply states that the rejections are maintained for reasons set forth in the prior office action in direct violation of MPEP §707.07(d). Also, the allegations of common knowledge regarding claims 47-49 appear for the first time in a final Office Action, in direct violation of MPEP §706.07(a)


clearly an absurdity. Numerous limitations and claims were never given any consideration whatsoever by the Examiner in direct violation of 37 CFR 1.104(b).

The Office Action readily conceded that many claim limitations could not be found in that reference. Rather than attempting to do a prior art search to see if those limitations exist in the prior art, the Examiner took the following two paths:

1. The examiner simply alleged, improperly and without any proof, that some limitations are "common knowledge."
2. The examiner ignored numerous other limitations and dependent claims.

The present office action simply ignores the burden placed on the Examiner to find pertinent prior art teaching or suggesting many of the claim limitations. Accordingly, the rejection of this Application must be overturned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'K. Leeds', written over the printed name.

Kenneth E. Leeds

Reg. No. 30,566

Attorney for Applicants



APPENDIX: CURRENTLY PENDING CLAIMS

1. A method comprising:

providing goods in reusable containers, said reusable containers having a radio frequency identification device attached thereto;

establishing a relationship between a radio frequency identification device and a memory;

providing said goods in said containers to customers;

collecting said reusable containers from said customers; and

identifying which customers have returned their reusable containers by electronically querying the radio frequency identification devices attached to the reusable containers collected from said customers.
2. Method of claim 1 wherein said establishing of said relationship comprises storing in said memory a database including data associated with said radio frequency identification device.
3. Method of claim 1 wherein said establishing of said relationship comprises storing in said memory an identification indicia indicative of said radio frequency identification device.
4. Method of claim 1 wherein said establishing of said relationship comprises storing in said memory an identification of the customer to whom said container is provided.

5. Method of claim 1 further comprising:

receiving orders from customers, said orders being for goods from a plurality of vendors, said orders being communicated to each of said vendors;
collecting said goods from said plurality of vendors at a central location;
providing said goods in said reusable containers;
informing said customers when said goods will be available for pickup; and
making said goods available for pickup by said customers, wherein said goods are in said reusable containers.

6. Method of claim 5 wherein said customers return said reusable containers to a central collection point, said method further comprising querying the radio frequency identification devices within said containers when said customers return said containers to said collection point.

7. Method of claim 1 further comprising crediting accounts of those customers who return their reusable containers, said crediting being accomplished by a computer that receives the data scanned in from said radio frequency identification devices.

8. A system comprising:

a memory;

a plurality of reusable containers, each reusable container having a radio frequency identification device affixed thereto; and

a scanner scanning the radio frequency identification device affixed to said containers and tracking when said containers are provided to customers and when said containers are returned by said customers.

9. System of claim 8 wherein a computerized billing system is electronically coupled to the memory so that a customer is billed if that customer does not return the reusable container.

10. A method comprising:

- providing goods in reusable containers, said reusable containers having a radio frequency identification device attached thereto;
- establishing a relationship between a radio frequency identification device and a memory;
- shipping said goods in said containers to a distribution point;
- providing said goods to customers;
- collecting said reusable containers; and
- identifying which containers have been collected by electronically querying the radio frequency identification devices attached to the reusable containers.

11. A system comprising:

- a memory;

a plurality of reusable containers, each reusable container having a radio frequency identification device affixed thereto; and

a scanner scanning the radio frequency identification device affixed to said containers and tracking said containers, said containers being collected at a collection point after they have been used to ship products, said scanner scanning the radio frequency identification device affixed to said containers at the collection point so that the collection of said containers can be logged.

12. System of claim 11 wherein said containers are collected at a collection point after they have been used to ship products, said scanner scanning the radio frequency identification device affixed to said containers at the collection point so that the location of said containers can be tracked.

13. A method comprising:

- providing goods in reusable containers, said reusable containers having an indicia attached thereto;
- establishing a relationship between said indicia and a memory;
- providing said goods in said containers to customers;
- collecting said reusable containers from said customers; and
- identifying which customers have returned their reusable containers by electronically reading the indicia attached to the reusable containers collected from said customers.

14. Method of claim 13 wherein said indicia comprise machine readable indicia, said method further comprising scanning said machine readable indicia prior to providing said goods in said containers to said customers, and entering into said memory information indicating the containers and the customers to whom said containers are being provided.

15. Method of claim 14 wherein said indicia comprises a bar code or a magnetic strip.

16. Method of claim 14 further comprising collecting said containers from said customers and scanning said indicia after collecting said containers from said customers.

17. Method of claim 13 wherein said indicia are machine-readable indicia, said reading of said indicia comprising scanning said indicia electronically.

18. A method comprising:

- providing goods in reusable containers, said reusable containers having identification indicia attached thereto;
- establishing a relationship between that indicia and a memory;
- providing said goods in said containers to customers;
- collecting information on the purchasing habits of said customers and storing said information in a memory device; and

offering a reduction of shipping cost in exchange for allowing targeted advertisement to be added to the reusable containers in response to said information in said memory device.

19. Method of claim 1 wherein said reusable containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

20. System of claim 8 wherein said containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

21. Method of claim 10 wherein said reusable containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

22. System of claim 11 wherein said containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

23. Method of claim 13 wherein said reusable containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

24. Method of claim 18 wherein said reusable containers contain one or more consumer products and are provided to the consumers of said consumer products in said containers.

25. Method of claim 1 wherein said radio frequency identification device is provided in a compartment within said container.

26. System of claim 8 wherein said radio frequency identification device is provided in a compartment within said container.

27. Method of claim 10 wherein said radio frequency identification device is provided in a compartment within said container.

28. System of claim 11 wherein said radio frequency identification device is provided in a compartment within said container.

29. A method comprising:
providing goods in reusable containers, said reusable containers being equipped with a radio frequency identification device;
providing said goods in said containers to customers;
collecting said reusable containers from said customers; and

identifying which customers have returned their reusable containers by electronically querying the radio frequency identification devices with which the reusable containers collected from said customers are equipped.

30. Method of claim 29 further comprising logging data in a memory indicative of the return of said reusable containers in response to said electronically querying.

31. A system comprising:
a memory;
a plurality of reusable containers, each reusable container being equipped with a radio frequency identification device; and
a scanner scanning the radio frequency identification device with which said containers are equipped and tracking when said containers are provided to customers and when said containers are returned by said customers.

32. A method comprising:
providing goods in reusable containers, said reusable containers equipped with an radio frequency identification device;
shipping said goods in said containers to a distribution point;
providing said goods to customers;
collecting said reusable containers after said shipping and providing; and

identifying which containers have been collected by electronically querying the radio frequency identification devices with which the reusable containers are equipped.

33. Method of claim 32 further comprising logging data in a memory indicative of the return of said reusable containers in response to said electronically querying.

34. A system comprising:
a memory;
a plurality of reusable containers, each reusable container being equipped with a radio frequency identification device; and
a scanner for scanning the radio frequency identification device with which said containers are equipped and tracking said containers, wherein said containers are collected at a collection point after they have been used to ship products, and said scanner scans the radio frequency identification device with which said containers are equipped at the collection point so that the return of said containers can be logged.

35. Method of claim 29 or 32 wherein the goods provided in said reusable containers are one or more packaged items.

36. Method of claim 29 or 32 wherein the reusable containers comprise are capable of containing one or more packaged items.

37. System of claim 31 or 34 wherein said reusable containers are capable of containing one or more packaged items.

38. System of claim 31 or 34 wherein said reusable containers contain one or more packaged items.

39. System of claim 31 or 34 wherein said scanner is located at a container return facility and wherein said memory stores information indicative of the customers to whom said containers have been provided.

40. System of claim 37 wherein said scanner is located at a container return facility and wherein said memory stores information indicative of the customers to whom said containers have been provided.

41. System of claim 38 wherein said scanner is located at a container return facility and wherein said memory stores information indicative of the customers to whom said containers have been provided.

42. Method of claim 29 or 32 wherein said containers are capable of containing different types of goods.

43. Structure of claim 31 or 34 wherein said containers are capable of containing different types of goods.

44. Method of claim 29 or 32 wherein said containers are capable of storing solid goods.

45. Method of claim 29 or 32 wherein said containers store solid goods.

46. Structure of claim 31 or 34 wherein said containers are capable of storing solid goods.

47. Method of claim 29 further comprising:
electronically ordering from a plurality of different companies some of said goods, said ordering of said goods being accomplished by a customer;
shipping said goods to a distribution point for pick-up by said customer in response to said ordering.

48. Method of claim 47 wherein said goods from said plurality of different companies ordered by said customer are provided in one of said reusable containers, said customer picking up said goods at said distribution point.

49. System of claim 31 further comprising:
a computer receiving orders from customers for goods from a plurality of different vendors;

a distribution point receiving said ordered goods in response to said orders, said customers receiving said goods in reusable containers at said distribution point.